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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA – EASTERN DIVISION**

12 **GREGORY T. TREIHART,**
13 **Individually and On Behalf of All**
14 **Others Similarly Situated,**

15 **Plaintiff,**

16 **vs.**

17 **BRIDGECREST ACCEPTANCE**
18 **CORPORATION dba**
19 **DRIVETIME CAR SALES**
20 **COMPANY,**

21 **Defendant.**

22 **Case No:**

23 **CLASS ACTION**

24 **COMPLAINT FOR DAMAGES**
25 **AND INJUNCTIVE RELIEF:**

26 **1. UNLAWFUL RECORDING**
27 **OF CELLULAR**
28 **COMMUNICATIONS**
29 **UNDER CALIFORNIA**
30 **PENAL CODE SECTION**
31 **632.7;**
2. INVASION OF PRIVACY
INTRUSION INTO PRIVATE
AFFAIRS

32 **JURY TRIAL DEMANDED**

INTRODUCTION

1. Gregory T. Treihart (“Plaintiff”), individually and on behalf of all others
2. similarly situated California residents (“Class Members”), brings this action for
3. damages and injunctive relief against Bridgecrest Acceptance Corporation dba
4. DriveTime Car Sales Company (hereinafter, referred to as “Defendants”), and
5. its present, former, or future direct and indirect parent companies, subsidiaries,
6. affiliates, agents, related entities for unauthorized recordings of conversations
7. with Plaintiff and Class Members without any notification nor warning to
8. Plaintiff or Class Members in violation of the California Invasion of Privacy
9. Act, Cal. Pen. Code § 630, et seq. (“CIPA”).
10. 2. The California State Legislature passed CIPA in 1967 to protect the right of
11. privacy of the people of California, replacing prior laws that permitted the
12. recording of telephone conversations with the consent of one party to the
13. conversation. California Penal Code § 632.7 was added to CIPA in 1992 due to
14. specific privacy concerns over the increased use of cellular and cordless
15. telephones. Section 632.7 prohibits intentionally recording all communications
16. involving cellular and cordless telephones, not just confidential
17. communications.
18. 3. Plaintiff makes these allegations on information and belief, with the exception of
19. those allegations that pertain to Plaintiff, or to Plaintiff’s counsel, which
20. Plaintiff alleges on his personal knowledge.
21. 4. Unless otherwise stated, all the conduct engaged in by Defendant took place in
22. California.
23. 5. All violations by Defendant were knowing, willful, and intentional, and
24. Defendant did not maintain procedures reasonably adapted to avoid any such
25. violation.
26. 6. Unless otherwise indicated, the use of Defendant’s name in this Complaint
27. includes all agents, employees, officers, members, directors, heirs, successors,
28.

1 assigns, principals, trustees, sureties, subrogees, representatives, and insurers of
2 the named Defendant.

3 **Jurisdiction and Venue**

4 7. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff seeks
5 \$5,000 in damages for each violation of the CIPA, which, when aggregated
6 among a proposed class number in the tens of thousands, exceeds the
7 \$5,000,000 threshold for federal court jurisdiction. Further, Plaintiff alleges a
8 national class, which will result in at least one class member belonging to a
9 different state than that of the Defendant, providing jurisdiction under 28 U.S.C.
10 § 1332(d)(2)(A). Therefore, the elements of the Class Action Fairness Act of
11 2005 (“CAFA”) are met, and this Court has jurisdiction.

12 8. Upon information and belief Defendant Bridgecrest, at all material times hereto,
13 acted on behalf of Defendant DriveTime, making unlawful and illegal
14 recordings of conversations with customers, including Plaintiff.

15 9. This Court has personal jurisdiction over Defendant because Defendant have
16 sufficient minimum contacts in California through systematic and continuous
17 marketing, sales, and distribution of their products and services, or otherwise
18 intentionally avail themselves of the California market through the promotion,
19 sale, marketing and distribution of their products so as to render the exercise of
20 jurisdiction over them by the California courts consistent with traditional notions
21 of fair play and substantial justice. Moreover, Defendant’s wrongful and illegal
22 conduct (as described herein) foreseeably affects consumers in California.
23 Furthermore, Defendant is registered to conduct business in California.

24 10. Venue is proper in this Court because, upon information and belief, Defendant
25 transact business in this district and the acts and omissions alleged, specifically,
26 Defendant invaded Plaintiff’s privacy by illegally recording a conversation with
27 Plaintiff, occurred while Plaintiff was physically located in the city of Riverside,
28 State of California, pursuant to 28 U.S.C. § 1391(b)(2).

1 11. Furthermore, Defendant has established sufficient contacts in this district
2 pursuant to 28 U.S.C. § 1331(a), through the business of promoting, selling,
3 marketing and distributing various products including vehicle financing related
4 products and services.

5 **Parties**

6 12. Plaintiff is, and at all times mentioned herein was, an individual citizen and
7 resident of the State of California, City of Riverside, in this judicial district.

8 13. Plaintiff is informed and believes, and thereon alleges, that Defendant operates
9 car dealerships which focus on offering used cars to consumers in twenty-seven
10 states, including California.

11 14. Defendant is a foreign limited liability company organized and existing by
12 virtue of the laws of the State of Arizona and doing business in California.

13 15. Plaintiff alleges that at all times mentioned herein was, a “person”, as defined by
14 Cal. Pen. Code § 632(b).

15 16. The transactions and occurrences that give rise to Plaintiff’s claims against
16 Defendant occurred in California.

17 17. All of the acts and failures to act alleged herein were duly performed by and are
18 attributable to Defendant, acting by and through its agents and employees. These
19 acts and failures to act were within the scope of Defendant’s agency and/or
20 employment, and Defendant ratified these unlawful acts and omissions.

21 **FACTUAL ALLEGATIONS**

22 18. On or around April 7, 2016, Defendant called Plaintiff on his cellular telephone
23 ending in 1740.

24 19. When Plaintiff answered the telephone, Defendant’s representative identified as
25 “Shannon” labeled the call a courtesy call and wanted to go over account
26 information and dealership experience.

27 20. At no time during the call did Defendant’s representative inform Plaintiff that
28 the call was being recorded.

1 21. The parties spoke for around ten minutes and thirty seconds about confidential
2 personal identifying information.

3 22. Plaintiff did not consent to the call being recorded without his knowledge.

4 23. Upon information and belief, Defendant records all of its telephone calls,
5 including the call between Plaintiff and Defendant described above.

6 24. Plaintiff was personally affected by Defendant's aforementioned conduct
7 because Plaintiff was shocked and upset that Defendant audio recorded one or
8 more cellular telephone conversations with Plaintiff without Plaintiff's
9 knowledge or consent.

10 25. California Penal Code § 632.7(a) is very clear in its prohibition against such
11 unauthorized tape recording without the consent of the other party to the
12 conversation: "Every person who, without the consent of all parties to a
13 communication, intercepts or receives and intentionally records, or assists in the
14 interception or reception and intentional recordation of, a communication
15 transmitted between two cellular radio telephones, a cellular radio telephone and
16 a landline telephone, two cordless telephones, a cordless telephone and a
17 landline telephone, or a cordless telephone and a cellular radio telephone
18 [violates this section]". California Penal Code § 637.2 permits Plaintiff to bring
19 this action for any violation of California Penal Code § 632.7(a) and provides
20 for statutory damages of \$5,000.00 for each violation.

21 26. Defendant recorded or otherwise made an unauthorized connection to the
22 Plaintiff's conversations with Defendant and its employees in violation of
23 California's statutory and common law against such unlawful intrusions into a
24 person's private affairs, including California's Constitutional prohibition in
25 Article 1, Section 1.

26 27. This suit seeks only damages and injunctive relief for recovery of economic
27 injury and it expressly is not intended to request any recovery for personal injury
28 and claims related thereto.

1 28. Plaintiff is informed and believes, and thereon alleges, that Defendant
2 intentionally recorded a communication transmitted between a cellular radio
3 telephone and a landline telephone without Plaintiff's consent as prohibited by
4 California Penal Code § 632.7(a).

5 29. Defendant violated Plaintiff's constitutionally protected privacy rights by failing
6 to advise or otherwise provide notice at the beginning of the recorded
7 conversations with Plaintiff that the call would be recorded and Defendant did
8 not try to obtain the Plaintiff's consent before such recording.

9 30. The recording or other unauthorized connection was done over the telephone,
10 without Plaintiff's prior knowledge or consent. Plaintiff was damaged thereby,
11 as detailed herein, in at least an amount permitted by the statutory damages
12 mandated by California Penal Code § 637.2(a).

13 31. Defendant, and its employees and agents, surreptitiously recorded the call made
14 by Defendant to Plaintiff. At no time before the call or at the outset of the call
15 was Plaintiff warned, told, advised or otherwise given any indication by
16 Defendant, its employees or agents, that the call would be recorded.

17 32. As a result thereof, Plaintiff has been damaged as set forth in the Prayer for
18 Relief herein.

19 33. Plaintiff seeks statutory damages and injunctive relief under California Penal
20 Code § 637.2.

21 **CLASS ACTION ALLEGATIONS**

22 34. Plaintiff brings this lawsuit as a class action on behalf of himself and Class
23 Members of the proposed Class pursuant to Federal Rules of Civil Procedure
24 23(a) and (b)(3) and/or (b)(2). This action satisfies the numerosity,
25 commonality, typicality, adequacy, predominance, and superiority requirements
26 of those provisions.

27 35. Plaintiff proposes the following Class consisting of and defined as follow:
28

1 All persons in California whose inbound and outbound
2 cellular telephone conversations were recorded without their
3 consent by Defendant/s and/or their agent/s within the two
4 years prior to the filing of the Complaint.

5 36. Excluded from the Class are: (1) Defendant, any entity or division in which
6 Defendant has a controlling interest, and its legal representatives, officers,
7 directors, assigns, and successors; (2) the judges to whom this case is assigned
8 and the Judge's staff; and (3) those persons who have suffered personal injuries
9 as a result of the facts alleged herein.

10 37. Plaintiff reserves the right to redefine the Class and to add subclasses as
11 appropriate based on discovery and specific theories of liability

12 38. Numerosity: The Class Members are so numerous that joinder of all members
13 would be unfeasible and impractical. The membership of the entire Class is
14 currently unknown to Plaintiff at this time; however, given that, on information
15 and belief, Defendant called thousands of class members in California and
16 recorded those calls during the class period, it is reasonable to presume that the
17 members of the Class are so numerous that joinder of all members is
18 impracticable. The disposition of their claims in a class action will provide
19 substantial benefits to the parties and the Court.

20 39. Commonality: There are common questions of law and fact as to Class Members
21 that predominate over questions affecting only individual members, including,
22 but not limited to:

23 • Whether, within the statutory period Defendant recorded any calls with the
24 Class Members;

25 • Whether Defendant had, and continues to have, a policy during the
26 relevant period of recording telephone calls made to the Class Members;

27 • Whether Defendant's policy or practice of recording telephone
28 communications with Class Members constitutes an invasion of privacy
 and a violation of Cal. Penal Code § 632.7;

1 • Whether Plaintiff and the Class Members were damaged thereby, and the
2 extent of damages for such violation; and
3 • Whether Defendant should be enjoined from engaging in such conduct in
4 the future.

5 40. Typicality Plaintiff's conversation was unlawfully recorded without a warning
6 of such recording, and thus, her injuries are also typical to Class Members.

7 41. Plaintiff and Class Members were harmed by the acts of Defendant in at least
8 the following ways: Defendant, either directly or through its agents, illegally
9 recorded the Plaintiff and Class Members' conversations with Defendant, and
10 Defendant invading the privacy of said Plaintiff and Class. Plaintiff and Class
11 Members were damaged thereby.

12 42. Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect the
13 interests of each Class Member with whom he is similarly situated, as
14 demonstrated herein. Plaintiff's attorneys, the proposed class counsel, are versed
15 in the rules governing class action discovery, certification, and settlement. In
16 addition, the proposed class counsel is experienced in handling claims involving
17 consumer actions and violations of the California Penal Code section 632.7.
18 Plaintiff has incurred, and throughout the duration of this action, will continue to
19 incur costs and attorneys' fees that have been, are, and will be, necessarily
20 expended for the prosecution of this action for the substantial benefit of each
21 Class Member.

22 43. Predominance: Questions of law or fact common to the Class Members
23 predominate over any questions affecting only individual members of the Class.
24 The elements of the legal claims brought by Plaintiff and Class Members are
25 capable of proof at trial through evidence that is common to the Class rather
26 than individual to its members.

27 44. Superiority: A class action is a superior method for the fair and efficient
28 adjudication of this controversy because:

1 a. Class-wide damages are essential to induce Defendants to comply with
2 California law.

3 b. Because of the relatively small size of the individual Class Members'
4 claims, it is likely that only a few Class Members could afford to seek
5 legal redress for Defendant's misconduct.

6 c. Management of these claims is likely to present significantly fewer
7 difficulties than those presented in many class claims.

8 d. Absent a class action, most Class Members would likely find the cost
9 of litigating their claims prohibitively high and would therefore have
10 no effective remedy at law.

11 e. Class action treatment is manageable because it will permit a large
12 number of similarly situated persons to prosecute their common claims
13 in a single forum simultaneously, efficiently, and without the
14 unnecessary duplication of effort and expense that numerous individual
15 actions would endanger.

16 f. Absent a class action, Class Members will continue to incur damages,
17 and Defendant's misconduct will continue without remedy.

18 45. Plaintiff and the Class Members have all suffered and will continue to suffer
19 harm and damages as a result of Defendant's unlawful and wrongful conduct. A
20 class action is also superior to other available methods because as individual
21 Class Members have no way of discovering that Defendant recorded their
22 telephone conversations without Class Members' knowledge or consent,
23 especially since Defendant's representatives at times falsely state that they do
24 not record such conversations.

25 46. The Class may also be certified because:

26 • The prosecution of separate actions by individual Class Members would
27 create a risk of inconsistent or varying adjudication with respect to
28 individual Class Members, which would establish incompatible standards

1 of conduct for Defendant;

2

- 3 The prosecution of separate actions by individual Class Members would
4 create a risk of adjudications with respect to them that would, as a
5 practical matter, be dispositive of the interests of other Class Members
6 not parties to the adjudications, or substantially impair or impede their
7 ability to protect their interests; and
- 8 Defendant has acted or refused to act on grounds generally applicable to
9 the Class, thereby making appropriate final and injunctive relief with
respect to the members of the Class as a whole.

10 This suit seeks only damages and injunctive relief for recovery of economic
11 injury on behalf of Class Members and it expressly is not intended to request
12 any recovery for personal injury and claims related thereto. Plaintiff reserves
13 the right to expand Class definitions to seek recovery on behalf of additional
14 persons as warranted as facts are learned in further investigation and discovery.

15 47. The joinder of Class Members is impractical and the disposition of their claims
16 in the Class action will provide substantial benefits both to the parties and to the
17 court. The Class Members can be identified through Defendant's records.

18

FIRST CAUSE OF ACTION
ILLEGAL RECORDING OF CELLULAR PHONE CONVERSATIONS
UNDER CALIFORNIA PENAL CODE § 632.7

19

20

21 48. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.

22 49. At all relevant times hereto, Defendant had and followed a policy and practice
23 of using a telecommunications system that enabled it to surreptitiously record
24 cellular telephone communications between Defendant and Plaintiff and Class
25 Members.

26 50. At all relevant times hereto, Defendant intentionally and surreptitiously
27 recorded cellular telephone calls concerning confidential matters between
28 Defendant and Plaintiff and Class Members.

- 1 51. At all relevant times hereto, Defendant had and followed a policy and practice
- 2 of not advising or warning Plaintiff and Class Members that their cellular
- 3 telephone communications with Defendant would be recorded.
- 4 52. Defendant failed to obtain consent of Plaintiff and Class Members prior to
- 5 recording any of their cellular telephone conversations.
- 6 53. This conduct by Defendant violated section 632.7(a) of the California Penal
- 7 Code.
- 8 54. Plaintiff and Class Members are entitled to recovery actual and statutory
- 9 damages in the amount of \$5,000.00 per violation of Cal. Pen. Code § 632.7.
- 10 55. Plaintiff's counsel is also entitled to attorneys' fees and costs pursuant to Cal.
- 11 Code of Civ. Proc. § 1021.5.

12 **SECOND CAUSE OF ACTION**
13 **INVASION OF PRIVACY INTRUSION INTO PRIVATE AFFAIRS**

- 14 56. Plaintiff repeats, re-alleges, and incorporates by reference, all other paragraphs.
- 15 57. At all relevant times hereto, Defendant had and followed a policy and practice of
- 16 using a telecommunications system that enabled it to surreptitiously record
- 17 cellular telephone communications between Defendant and Plaintiff and Class
- 18 Members.
- 19 58. At all relevant times hereto, Plaintiff and Class Members had a reasonable
- 20 expectation of privacy.
- 21 59. At all relevant times hereto, Defendant intentionally and surreptitiously recorded
- 22 cellular telephone calls concerning confidential matters between Defendant and
- 23 Plaintiff and Class Members.
- 24 60. At all relevant times hereto, Defendant had and followed a policy and practice of
- 25 not advising or warning Plaintiff and Class Members that their cellular
- 26 telephone communications with Defendant would be recorded.

1 61. Defendant failed to obtain consent of Plaintiff and Class Members prior to
2 recording any of their cellular telephone conversations, thus intentionally
3 intruding on Plaintiff's and Class Members' reasonable expectation of privacy.
4 62. This intentional intrusion was a substantial factor in causing Plaintiff and Class
5 Members harm.
6 63. Plaintiff's counsel is also entitled to attorneys' fees and costs pursuant to Cal.
7 Code of Civ. Proc. § 1021.5.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff, on behalf of himself and the Class, prays that
10 judgment be entered against Defendant, and Plaintiff and the Class be awarded
11 damages from Defendant, and each of them, as follows:

12 • Certify the Class as requested herein;
13 • Appoint Plaintiff to serve as the Class Representative for the Class;
14 • Appoint Plaintiff's Counsel as Class Counsel in this matter for the Class;
15 • Punitive damages;
16 • Special, general, compensatory and punitive damages;
17 • Reasonable attorneys' fees and costs; and
18 • An amount of \$5,000 for each violation of section 632 *et seq.* of the California
19 Penal Code, or three times the amount of any actual damages sustained by
20 Plaintiffs, whichever is greater.

21 In addition, Plaintiff and the Class Members pray for further judgment as follows
22 against Defendant:

23 **ILLEGAL TELEPHONE RECORDING OF CELLULAR PHONE CONVERSATIONS
24 UNDER CALIFORNIA PENAL CODE § 632.7**

25 • Special, general, compensatory and punitive damages;
26 • As a result of Defendant's violation of California Penal Code Sections 630 *et
27 seq.*, Plaintiff seeks statutory damages of \$5,000.00 pursuant to California Penal
28 Code § 637.2(a);

- Reasonable attorneys' fees pursuant to Cal. Code of Civ. Proc. § 1021.5;
- Injunctive relief to prevent the further occurrence of such illegal acts pursuant to California Penal Code § 637.2(b);
- An award of costs to Plaintiff and;
- Any other relief the Court may deem just and proper including interest.

INVASION OF PRIVACY INTRUSION INTO PRIVATE AFFAIRS

- Special, general, compensatory and punitive damages;
- Reasonable attorneys' fees pursuant to Cal. Code of Civ. Proc. § 1021.5;
- Injunctive relief, prohibiting such conduct in the future; and,
- Any other relief the Court may deem just and proper.

TRIAL BY JURY

57. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff and Class Members are entitled to, and demand, a trial by jury.

Respectfully submitted,

KAZEROUNI LAW GROUP, APC

Date: December 3, 2018

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